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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,662	06/30/2003	Caleb Eby	436-003	6996

7590 10/07/2004

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EXAMINER	
GORDON, STEPHEN T	

ART UNIT	PAPER NUMBER
3612	

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/608,662	EBY, CALEB	
	Examiner	Art Unit	
	Stephen Gordon	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 July 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) *8,18,26,36 and 45* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-17, 19-25,27-35,37-44, and 46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 June 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9-29-03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 8, 18, 26, 36, and 45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 7-28-04. Applicant should note, upon allowance of the independent claims from which the non-elected claims depend, such non-elected claims will be rejoined with the application if appropriate.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: area 6 (page 3) and camera 16a (page 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: the period in the middle of line 18 of page 23 should be deleted. Additionally, "24" on page 24 – line 2 and "64" on page 26 – line 4 should be –34—and –61-- respectively.

Appropriate correction is required.

4. Claims 1-7, 9-10, 13-17, 19-25, 27-35, 37-44, and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, "the other end" bridging lines 13 and 14 lacks clear antecedent basis and could be written as –another end—for clarity as best understood. Additionally, section "e)" is very confusing and doesn't seem to correspond to the elected/disclosed invention. It appears "first" of line 3 of the section should be –second—, and "a second" of line 4 of the section should be –said first—for correctness/clarity. The term "outwardly" in line 5 of the section should apparently be –inwardly—to correspond with the disclosed elected invention as best understood. Additionally, --of—should be inserted before "said sidewall" of line 5 of the section to remove awkwardness. The last two lines of the claim are somewhat confusing. As best understood, "an extended" in the second to last line and "a retracted" in the last line could be replaced with –said extended—and –said retracted— respectively to clarify the claim in this regard.

Re claim 2, "said first pivot location" lacks clear antecedent basis as multiple first pivot locations per se are recited in the base claim.

Re claim 3, the last line of the claim is somewhat confusing. As best understood, "an open" in the last line and "a closed" in the last line could be replaced with –said open—and –said closed— respectively to clarify the claim in this regard.

Re claim 4, the second to last line of the claim is somewhat confusing. As best understood, "a closed" in the second to last line could be replaced with –said closed—to clarify the claim in this regard.

Re claim 5, "the other end" in line 6 lacks clear antecedent basis and could be written as –another end—for clarity as best understood.

Re claim 6, the recited plurality of planar sidewall portions in line 2 apparently constitutes a double inclusion of the planar sidewall portion of intervening claim 5. Additionally note, "said planar sidewall portions" in the last line lacks clear antecedent basis.

Re claim 7, "said planar sidewall portion" used throughout the claim (i.e. 3 places total) lacks clear antecedent basis in view of the recited portion of claim 5 and the one portion of claim 6. Additionally, line 4 is somewhat confusing, and "an open" could be replaced with –said open—to correct the claim in this regard as best understood.

Re claim 9, "said top edge section of said planar sidewall portion" used throughout the claim (i.e. 2 places total) lacks clear antecedent basis as no edge section for the sidewall portion per se has been previously established.

Re claim 10, "the top edge section of said sidewall portion" lacks clear antecedent basis – see discussion regarding claim 9.

Re claim 13, "said cover pivot location...connecting member" lacks clear antecedent basis.

Re claim 14, "said cover pivot location...connecting member" lacks clear antecedent basis. Additionally, "the other end" in line 5 lacks clear antecedent basis and could be written as –another end—for clarity as best understood.

Re claim 15, the second paragraph is very confusing and doesn't seem to correspond to the elected/disclosed invention. It appears the term "outwardly" in line 5 of the claim should be –inwardly—to correspond with the disclosed elected invention as best understood. Additionally, "said sidewall means and" of the last line should apparently be deleted as this language again does not appear to correspond to the elected/disclosed invention.

Re claim 16, lines 3-5 are somewhat confusing, and "an extended position" bridging lines 3 and 4, "an open" in line 4, and "a retracted" in the last line should apparently be ---said extended position--, --said open--, and –said retracted— respectively to clarify the lines as best understood.

Re claim 19, section "h)" is very confusing and doesn't seem to correspond to the elected/disclosed invention. It appears the term "outwardly" in line 2 of the section should be –inwardly—to correspond with the disclosed elected invention as best understood. Additionally, "said sidewall means and" of the last line of the section should apparently be deleted as this language again does not appear to correspond to the elected/disclosed invention.

Re claim 23, "the other end" in line 5 lacks clear antecedent basis and could be written as –another end—for clarity as best understood. Additionally, "said downwardly extending elongated connecting member" lacks clear antecedent

basis and "downwardly extending" could be deleted from the term to clarify the claim in this regard.

Re claim 24, lines 3-5 are somewhat confusing, and "an extended position" bridging lines 3 and 4, "an open" in line 4, and "a retracted" in the last line should apparently be ---said extended position--, --said open--, and --said retracted— respectively to clarify the lines as best understood.

Re claim 27, "the other end" bridging lines 12 and 13 lacks clear antecedent basis and could be written as –another end—for clarity as best understood. Additionally, section "e)" is very confusing and doesn't seem to correspond to the elected/disclosed invention. It appears "first" of line 3 of the section should be –second—, and "a second" of line 4 of the section should be –said first—for correctness/clarity. The term "outwardly" in line 5 of the section should apparently be –inwardly—to correspond with the disclosed elected invention as best understood. The last two lines of the section "f)" are somewhat confusing. As best understood, "an extended" in the second to last line of the section and "a retracted" in the last line of the section could be replaced with –said extended— and –said retracted— respectively to clarify the claim in this regard.

Re claim 30, "said first pivot location" lacks clear antecedent basis as multiple first pivot locations per se are recited in the base claim.

Re claim 32, the last line of the claim is somewhat confusing. As best understood, "a closed" in the last line could be replaced with –said closed—to clarify the claim in this regard.

Re claim 33, "the other end" in line 6 lacks clear antecedent basis and could be written as –another end—for clarity as best understood.

Re claim 34, the recited plurality of planar sidewall portions in line 2 apparently constitutes a double inclusion of the planar sidewall portion of intervening claim 33. Additionally note, "said planar sidewall portions" in the last line lacks clear antecedent basis.

Re claim 35, "said planar sidewall portion" used throughout the claim (i.e. 3 places total) lacks clear antecedent basis in view of the recited portion of claim 33 and the one portion of claim 34. Additionally, line 4 is somewhat confusing, and "an open" could be replaced with –said open—to correct the claim in this regard as best understood.

Re claim 37, "said top edge section of said planar sidewall portion" used throughout the claim (i.e. 2 places total) lacks clear antecedent basis as no edge section for the sidewall portion per se has been previously established.

Re claim 38, "the top edge section of said sidewall portion" lacks clear antecedent basis – see discussion regarding claim 37.

Re claim 40, "said cover pivot location...connecting member" lacks clear antecedent basis.

Re claim 41, "said cover pivot location...connecting member" lacks clear antecedent basis. Additionally, "the other end" in line 5 lacks clear antecedent basis and could be written as –another end—for clarity as best understood.

Re claim 42, the second paragraph is very confusing and doesn't seem to correspond to the elected/disclosed invention. It appears the term "outwardly" in line 5 of the claim should be –inwardly—to correspond with the disclosed elected invention as best understood. Additionally, "said sidewall means and" of the last line should apparently be deleted as this language again does not appear to correspond to the elected/disclosed invention.

Re claim 43, lines 4-5 are somewhat confusing, and "an extended position" in line 4, "an open" in line 4, and "a retracted" in the last line should apparently be ---said extended position--, --said open--, and –said retracted—respectively to clarify the lines as best understood.

Re claim 46, line 5 is somewhat confusing, and "a container end planar sidewall portion" of the line could be written as –one of said container end planar sidewall portions—to clarify the claim I this regard as best understood.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 3-6, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hoch '969.

Hoch teaches a top load container including sidewalls and a bottom defining a receptacle, a cover portion 34, and a connecting member 40+ and actuating means 16+ defining sidewall connecting means as broadly claimed.

Re claim 1, the device defines the various pivots and axes as broadly claimed and as best understood.

Re claim 3, the actuating means would produce a leveraged force at least to some degree as broadly claimed.

Re claim 4, the downwardly extending apron section of cover 34 would function at least to some degree as broadly claimed.

Re claims 5 and 6, the device is configured as broadly claimed and as best understood.

7. Claims 19-22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hardwick '188.

Hardwick teaches a container 2+ on a mobile dumping base means 9+ including a receptacle with sidewall means, a top edge section, a cover portion 102, a downwardly extending section 148+, and an actuating means 154+.

Re claims 19 and 22, the device includes the various pivots and axes as broadly claimed and as best understood.

8. Claims 1, 3, 5-6, 11-13, 15-17, 27-28, 31, 33-34, 39-40, 42-44, and 46, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Cuthbertson.

Cuthbertson teaches a top load dump container 26+ including sidewalls and a bottom defining a receptacle, a top peripheral edge, a cover portion 84, and

sidewall connecting means with a connecting member 108 and an actuating means 112.

Re claims 1, 11-13, 15, 33, 39, 40, and 42, the device defines the various pivots and axes as broadly claimed and as best understood.

Re claims 3 and 31, the actuating means would produce a leveraged force at least to some degree as broadly claimed.

Re claims 5 and 6, the device is configured as broadly claimed and as best understood.

Re claim 27, the device includes mobile base means as broadly claimed – see figure 5.

Re claim 46, the device includes end wall means as broadly claimed – see figure 2 etc.

9. Claims 2, 7,9-10, 14, 23-25, 29-30, 32, 35, 37-38, and 41 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Hagenbuch et al teaches a top dumping container handler.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-

2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9-30-04

Stephen Gordon
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Art Unit 3612

stg